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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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07/728,428

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JO ANN M. CANICH

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03/20/2008

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EXAMINER

RABAGO, ROBERTO

ART UNIT

PAPER NUMBER

1796

MAIL DATE

DELIVERY MODE

03/20/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

07/728,428

Applicant(s)

CANICH, JO ANN M.

Examiner

Roberto Rábago

Art Unit

1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 27.44-52.54-56.60-74.77-124 and 126-132 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 27.44-47 and 122 is/are allowed.
- 6) ☒ Claim(s) 48-50.54-56.60-63.66.83-113.115-121.123.124 and 126-132 is/are rejected.
- 7) ☒ Claim(s) 48.51.52.64-74.77-82.88.105.114.117 and 121 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-543)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Independent claims 48, 64-68 and 70-74 are directed to a product which is not rejected over prior art or double patenting. In anticipation of applicant correcting the minor issues set forth below with respect to these claims, pursuant to the procedures set forth in MPEP § 821.04(B), claims 83-121 and 127-132, directed to the process of making or using an allowable product, previously withdrawn from consideration as a result of a restriction requirement, are hereby rejoined and fully examined for patentability under 37 CFR 1.104.

Because all claims previously withdrawn from consideration under 37 CFR 1.142 have been rejoined, **the restriction requirement as set forth in the Office action mailed on 2/23/2007 is hereby withdrawn.** In view of the withdrawal of the restriction requirement as to the rejoined inventions, applicant(s) are advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once the restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

Claim Objections

2. Claims 48, 64-68, 70-74, 88, 105, 117, and 121 are objected to. Each claim has been amended to include "x is 1, 2, 3or 4"; the claims are objected to because applicants have failed to properly space "3or". Correction is required.

Claim Rejections - 35 USC § 112

3. Claims 48-50, 54-56, 60-63, 66, 83, 102, 103, 123, 124, and 126-132 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

(a) In claim 48, and claims 49-50, 54-56, 60-63, 83, 123, 124, and 126-132 as dependent thereon, the meaning of Z in "when M is Hf or Zr" cannot be determined. It would appear that the intended metal should have been Zr.

(b) Claim 66 is indefinite in the limitation "when M is Ti" because earlier in the claim M had been limited to Zr or Hf.

(c) Claims 102 and 103 are indefinite because the claims do not indicate what type of "series" is intended.

Double Patenting

4. Claims 88-98, 100, 101, and 104 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-7 of U.S. Patent No. 7,205,364. Although the conflicting claims are not identical, they are not

patentably distinct from each other because the instant claims set forth substantially the same process as the patented claims when $y=0$, and therefore the patented claims anticipate instant claims 88-97. The additional selections required in claims 98, 100, and 101 are obvious because they represent nothing more than the most conventional choices for operating an olefin polymerization. Regarding claim 104, the stated distribution would inherently be obtained simply by operating the process as stated in the patented claims.

5. Claims 83-113, 115-121, and 129-131 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-16 of copending Application No. 11/387,217. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant claims set forth substantially the same process as the copending claims, and therefore the copending claims anticipate instant claims 83-113, 115-117, 119, 121, 129 and 130. The additional selections required in claims 118, 120 and 131 are obvious because they are shown in the working examples which provide support for the claims. The courts have stated that those portions of the specification which provide support for the patent claims may also be examined and considered when addressing the issue of whether a claim in the application defines an obvious variation of an invention claimed in the patent. In re Vogel, 422 F.2d 438, 441-42, 164 USPQ 619, 622 (CCPA 1970).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Allowable Subject Matter

6. Claims 27, 44-47 and 122 are allowed.

Claims 51, 52, 69, 77-82 and 114 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roberto Rábago whose telephone number is (571) 272-1109. The examiner can normally be reached on Monday - Friday from 8:00 - 4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu can be reached on (571) 272-1114. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Roberto Rábago/
Primary Examiner
Art Unit 1796

RR
March 15, 2008